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August 5, 2008

VIA ECF

Hon. Lisa Margaret Smith
United States Magistrate Judge
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601-4150

RE: Castle Oil Corporation v. Les Logiciels Info-Sys Software, Inc.
Case No. 07-CV-7330
KB&R File No.: 932.020

Dear Magistrate Smith:

This office represents the Defendant Les Logiciels Info-Sys Software, Inc. ("Info-Sys"), in the above-captioned action. As per the Court's request during the telephone conference with all parties on August 2, 2008, Info-Sys is submitting this letter brief to the Court requesting an Order staying the instant action pending the Canadian bankruptcy proceeding of Info-Sys.

Info-Sys is a corporation formed in Canada that was engaged in the business of software development. On May 21, 2008, Info-Sys made an assignment for bankruptcy proceedings before the Superior Court, Commercial Division, in the Province of Quebec, District of Quebec, Canada (Court No. 505-11-009106-084). On the same day, Info-Sys's bankruptcy trustee sent a Stay of Proceedings letter pursuant to section 69.3(1) of Canada's *Bankruptcy and Insolvency Act* to this Court and to all parties in this action. See letter attached hereto as exhibit "A". Thereafter, on May 23, 2008, a telephone conference with the Court and all parties was held at which time the Court entered a temporary stay until July 1, 2008, in order to give this office time to contact Info-Sys's bankruptcy trustee to obtain a status of the bankruptcy proceedings. During this temporary stay our office was able to reach the Trustee, Jerry Devlechin of Samson Belair/Deloitte & Touch, Inc., and confirm that Info-Sys was indeed in bankruptcy proceedings. During a telephone conference on July 1, this office reported this status to the Court and requested to make an application for a stay pending the Canadian bankruptcy proceeding. Counsel for the plaintiff, Castle Oil Corporation, requested time to speak with her clients regarding this matter and another conference call was scheduled for August 1, 2008. During the August 1st conference call, Castle Oil's counsel informed the court that Castle Oil did not intend

to make any formal motion regarding the requested bankruptcy stay. Once again, this office requested to make an application for a stay pending the bankruptcy proceeding. This Court requested that counsel proceed via a letter motion to the Court.

It is respectfully submitted that this Court should recognize Info-Sys's Canadian bankruptcy filing under the doctrine of comity. "Comity" has been defined as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 998-999 (2d Cir. 1993) (quoting *Hilton v. Guyot*, 159 U.S. 113, 164, 16 S.Ct. 139, 40 L.Ed. 95 (1895)). A court may grant comity if "it is shown that the foreign court is a court of competent jurisdiction, and that the laws and public policy of the forum state and the rights of its residents will not be violated. *Id.* at 999. If the foreign court abides by "fundamental standards of procedural fairness," [then] granting comity is appropriate." *Ibid.* (quoting *Cunard S. S. Co. v. Salen Reefer Serv. AB*, 773 F.2d 452, 457 (2d Cir. 1985)).

"The Second Circuit has consistently recognized the appropriateness of extending comity to foreign bankruptcy proceedings." *Brenton v. Consolidated Rail Corp.*, 2003 WL 21383255 at *4 (W.D.N.Y. Feb. 4, 2003) (citation omitted). "More importantly, this Circuit has found Canada to be a 'sister common law jurisdiction with [bankruptcy] procedures akin to our own." *Id.* (citing *Clarkson Co. Ltd. v. Shaheed*, 544 F.2d 624, 630 (2d Cir. 1976)). As noted by the Court in *Brenton*, "[s]imilar to the automatic stay provision of United States bankruptcy law, Canada's *Bankruptcy and Insolvency Act* ("BIA") provides for an automatic stay of civil actions against a debtor upon the filing of bankruptcy." *Brenton* at *4. Section 69.3(1) of the BIA provides that:

Subject to subsection (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged.

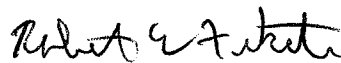
Bankruptcy and Insolvency Act, R.S.C., Ch. B-3, § 69.3(1)(1985)(Can.).

Additionally, the BIA provides that bankruptcy occurs upon "the date of the filing of an assignment by the [debtor]." BIA, at § 2.1. Info-Sys filed its assignment in bankruptcy on May 21, 2008. Thereafter, a Stay of Proceeding pursuant to § 69.3(1) of the BIA was sent to all parties involved in the instant case and to the Court (See exhibit "A").

Given the Second Circuit's clear intention to grant comity to the bankruptcy stays put in place during bankruptcy proceedings in Canada, it is respectfully submitted that this Court should grant a stay pending a resolution of Info-Sys's bankruptcy proceeding.

Respectfully submitted,

KAUFMAN BERGEEST & RYAN LLP



Robert E. Fekete (RF6464)

cc : **Via ECF**

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CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
DIVISION No.: 01-Longueuil
COURT. No.: 505-11-009106-084
ESTATE No.: 41-1071062
OFFICE No.:

SUPERIOR COURT
Commercial Division

IN THE MATTER OF THE
BANKRUPTCY OF:

Les Logiciels Info-Sys Inc., a legal person, duly incorporated
according to law, having its head office and principal place of
business at 160 de Montarville Boulevard, Suite 201, Boucherville,
Quebec, J4B 6S2

— and —

Bankrupt

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
(Philippe Jordan, CMA, CIRP, responsible) having its head office
at 1 Place Ville-Marie, Suite 3000, Montreal, Quebec H3B 4T9

Trustee

STAY OF PROCEEDINGS
(Section 69.3(1) of the Act)

REGISTERED MAIL

TO: Castle Oil
c/o Gellert & Klein P.C.
75 Washington Street
Poughkeepsie NY 12601
U.S.A.

Southern District of New York
Court House
500 Pearl Street
New York NY 1007-1312
U.S.A.

Me Robert Fekete
Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
Valhalla NY 10595
U.S.A.

Take NOTICE that on the 21st day of May 2008, the above-named debtor has made an assignment. Pursuant to Section 69.3(1) of the *Bankruptcy and Insolvency Act*, there shall be a stay of all proceedings, particularly in the following matter:

CASTEL OIL

Plaintiff

VS

LES LOGICIELS INFO-SYS INC.

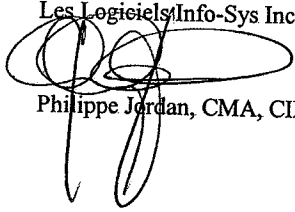
Defendant

Case number:

07-CV-7330

DATED AT MONTREAL, this 21st day of May 2008.

SAMSON BELAIR/DELOITTE & TOUCHE INC.
In its capacity as Trustee to the Estate of
Les Logiciels Info-Sys Inc.


Philippe Jordan, CMA, CIRP

No. 505-11-009106-084

SUPERIOR COURT
Commercial Division

Les Logiciels Info-Sys Inc.

Bankrupt

– and –

Samson Bélair/Deloitte & Touche Inc.

Trustee

STAY OF PROCEEDINGS
(Section 69.3(1) of the Act)

Deloitte.

Samson Bélair/Deloitte & Touche Inc.
1 Place Ville-Marie, Suite 3000, Montréal QC H3B 4T9
Tel: 514-393-5953 Fax: 514-390-4103